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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,156	01/03/2002	James T. Gourd	GOU 0101 PUS	7801

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 04/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,156

Applicant(s)

GOURD ET AL.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the retaining walls in substantially non-parallel relationship of claims 7 and 19 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "21" has been used to designate both protrusions and lips in Figure 3.
3. The drawings are objected to because reference numbers 40 and 46 appear to be transposed with reference numbers 32 and 38 in Figure 1. Reference numbers 12, 18, 24, 26, 43, and 52 are not depicted in Figure 3 as mentioned in the specification. Reference numbers 226 and 244 are not shown in Figure 7. Reference numbers 326 and 344 are not shown in Figure 8. Reference numbers 426 and 444 are not shown in Figure 8. The length of sidewall 444 is not shown as less than that of object 456 as mentioned in the specification.
4. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities: Page 5, line 21, states "protrusions 52", item 52 is previously defined as a ridge. Page 5, line 21, states "recesses 18", item 18 is previously defined as a slot. Page 7, line 25, states "retaining device 211", since applicant is referring Figure 8, it appears that this phrase should read "retaining device 311".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 15, 18, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the slot" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitations "the ridge" in line 4, and "the slot" in lines 4-5. There is insufficient antecedent basis for these limitations in the claim.

Claim 19 recites the limitations "the ridge" in line 4, and "the slot" in line 5. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 9, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaminski (US 5,195,633).

Regarding claim 1, Kaminski discloses a retaining device (Figure 1) with first and second side walls (the two small ends of the container, as shown, Figure 1); first and second retaining walls (10, 12) forming an inner space (28), each retaining wall having an inner and outer surface (as shown, Figure 3); and first aperture (20) with a first lip (inner tip of first aperture 20).

As to claim 2, Kaminski discloses first and second side walls disposed in substantially parallel relationship (as shown, Figure 1).

As to claim 3, Kaminski discloses second retaining wall (12) with second aperture (26) and second lip (inner tip of second aperture 26).

As to claim 4, Kaminski discloses a plurality of first apertures and first lips (as shown, Figures 1-3).

As to claim 5, Kaminski discloses a plurality of second apertures and second lips (as shown, Figures 1-3).

As to claim 6, Kaminski discloses side walls with a length about the length of the object to be held, and first and second retaining walls in substantially parallel relationship (as shown, Figures 1-3).

As to claim 9, Kaminski discloses outer surfaces (30, 32) of retaining walls (10, 12) that are substantially planar (as shown, Figure 3).

As to claim 12, Kaminski discloses apertures (20 and 26) with a width that is less than the length of the object to be held (as shown, Figure 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-6, 9, 11, 12, 14-18, 20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Light et al (US 5,261,535) in view of Fryburger (US 2,828,008).

Regarding claim 1, Light et al discloses a retaining device (Figure 3, 12) with first side walls (20); first and second retaining walls (14, 16) forming an inner space (as shown, Figure 3), each retaining wall having an inner and outer surface (as shown, Figure 3); and first aperture (24) on first retaining wall (14) with a first lip (26). Light et al meets all limitations claimed by the applicant except:

Light et al does not disclose a second side wall.

Fryburger discloses a retaining device (Figures 4-6) with second side walls (33, 34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining device of Light et al with a second side wall as taught by Fryburger in order to keep the retaining walls from separating during handling.

As to claim 2, the retaining device of Light-Fryburger discloses first and second side walls disposed in substantially parallel relationship (Fryburger, Figure 5).

As to claim 3, the retaining device of Light-Fryburger discloses second retaining wall (Light, 16) with second aperture (Light, 24) and second lip (Light, 26).

As to claim 4, the retaining device of Light-Fryburger discloses a plurality of first apertures and first lips (as shown, Light, Figure 3).

As to claim 5, the retaining device of Light-Fryburger discloses a plurality of second apertures and second lips (as shown, Light, Figure 3).

As to claim 6, the retaining device of Light-Fryburger discloses side walls with a length about the length of the object to be held, and first and second retaining walls in substantially parallel relationship (as shown, Fryburger, Figures 4-6).

As to claim 9, the retaining device of Light-Fryburger discloses outer surfaces of retaining walls (Light, 14, 16) that are substantially planar (as shown, Light, Figure 5).

As to claim 11, the retaining device of Light-Fryburger discloses side walls having a length less than the object to be held (as shown, Light, Figure 5).

As to claim 12, the retaining device of Light-Fryburger discloses apertures (Light, 24) with a width that is less than the length of the object to be held (as shown, Light, Figure 3).

Regarding claim 14, Light et al discloses a retaining strip (12, Figure 3) with first retaining wall (14) having a free edge and a first hinged edge (17), first aperture (24), and first lip (26); integral side wall (20) having first end (17) and second end (19), with first end (17) forming a first living hinge; and a second retaining wall (16) having a second hinged edge (19) forming a second living hinge. Light meets all limitations claimed by the applicant except:

Light et al does not disclose a free edge having a recess, a third living hinge, or a ridged side wall with a fourth end having a protrusion.

Fryburger discloses a retaining strip (Figure 4) with a first retaining wall (32), integral side wall (31), second retaining wall (30), and ridged side wall (33). First retaining wall (32) has a free edge (29) with recesses (36, 37), and ridged side wall (33) has protrusions (38, 39). Ridged side wall (33) and second retaining wall (30) form a

third living hinge (26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining strip of Light et al with a ridged side wall, third living hinge, and a protrusion-recess connection as taught by Fryburger in order to keep the retaining walls from separating during handling.

As to claim 15, the retaining strip of Light-Fryburger discloses first and second side walls disposed in substantially parallel relationship with the living hinges at four separate corners (Fryburger, Figure 5).

As to claim 16, the retaining strip of Light-Fryburger discloses second retaining wall (Light, 16) with second aperture (Light, 24) and second lip (Light, 26).

As to claim 17, the retaining strip of Light-Fryburger discloses a plurality of first and second apertures with first and second lips (as shown, Light, Figure 3).

As to claim 18, the retaining strip of Light-Fryburger discloses side walls with a length about the length of the object to be held, and first and second retaining walls in substantially parallel relationship (Light, Figure 3).

As to claim 20, the retaining strip of Light-Fryburger discloses outer surfaces of retaining walls (Light, 14, 16) that are substantially planar (as shown, Light, Figure 5).

As to claim 22, the retaining strip of Light-Fryburger discloses side walls having a length less than the object to be held (as shown, Light, Figure 5).

As to claim 23, the retaining strip of Light-Fryburger discloses apertures (Light, 24) with a width that is less than the length of the object to be held (as shown, Light, Figure 3).

9. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Light et al in view of Fryburger as applied to claims 1 and 14 above, and further in view of Woeber et al (US 2,881,914).

Regarding claim 7, the retaining device of Light-Fryburger as applied to claim 1 above meets all limitations claimed by the applicant except:

Light-Fryburger does not disclose retaining walls in substantially non-parallel relationship.

Woeber et al discloses a retaining device (Figure 6) with retaining walls (11, 12) in substantially non-parallel relationship. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining device of Light-Fryburger with retaining walls in a non-parallel relationship as taught by Woeber in order to retain objects with a semi-conical shape.

Regarding claim 19, the retaining strip of Light-Fryburger as applied to claim 14 above meets all limitations claimed by the applicant except:

Light-Fryburger does not disclose retaining walls in substantially non-parallel relationship.

Woeber et al discloses a retaining strip (Figure 6) with retaining walls (11, 12) in substantially non-parallel relationship. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining strip of Light-Fryburger with retaining walls in a non-parallel relationship as taught by Woeber in order to retain objects with a semi-conical shape.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Light et al in view of Fryburger as applied to claim 1 above, and further in view of Girona Alepuz (US 5,115,965).

The retaining device of Light-Fryburger as applied to claim 1 above meets all limitations claimed by the applicant except:

Light-Fryburger does not disclose a protrusion and recess for stacking.

Girona Alepuz discloses a retaining device (Figure 4) with protrusions (10) and recesses (9) for stacking. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining device of Light-Fryburger with protrusions and recesses as taught by Girona Alepuz and claimed by the applicant in order to enable the devices to be stacked.

11. Claims 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Light et al in view of Fryburger as applied to claims 1 and 14 above, and further in view of Gestetner (US 4,319,681).

Regarding claim 10, the retaining device of Light-Fryburger as applied to claim 1 above meets all limitations claimed by the applicant except:

Light-Fryburger does not disclose a retaining wall with a decline to complement the lip.

Gestetner discloses a retaining device (10) with an aperture (24) having a lip (34) and a decline (20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining device of Light-Fryburger with a

retaining wall having a decline to complement the lip as taught by Gestetner in order to retain items of a fragile nature.

Regarding claim 21, the retaining strip of Light-Fryburger as applied to claim 14 above meets all limitations claimed by the applicant except:

Light-Fryburger does not disclose a retaining wall with a decline to complement the lip.

Gestetner discloses a retaining strip (10) with an aperture (24) having a lip (34) and a decline (20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining strip of Light-Fryburger with a retaining wall having a decline to complement the lip as taught by Gestetner in order to retain items of a fragile nature.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Light et al in view of Fryburger as applied to claim 1 above, and further in view of Kobayashi (JP 05329239 A).

The retaining device of Light-Fryburger as applied to claim 1 above meets all limitations claimed by the applicant except:

Light-Fryburger does not disclose a first lip with a notch.

Kobayashi discloses a retaining device (1) with a first lip having a notch (3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the retaining device of Light-Fryburger with a lip having a notch as taught by Kobayashi in order to reduce the force required to remove the retained object.


Conclusion

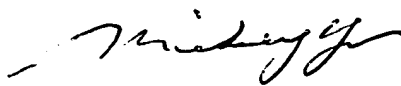
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vajtay discloses a retaining device (Figure 1) with an annular lip extending inward from the circular aperture; the lip is formed to retain spherically shaped objects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Gregory Pickett
Examiner
April 19, 2003


Mickey Yu
Supervisory Patent Examiner
Group 3700